IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-6527

JAMES INGRAHAM, by his mother and next friend, ELOISE INGRAHAM, and ROOSEVELT ANDREWS, by his father and next friend WILLIE EVERETT,

*Petitioners,*

v.

WILLIE J. WRIGHT, I; LEMMIE DELIFORD; SOLOMON BARNES; EDWARD L. WHIGHAM; and THE DADE COUNTY SCHOOL BOARD,

*Respondents.*

Certiorari to the United States Court of Appeals for the Fifth Circuit

## BRIEF OF THE NATIONAL EDUCATION ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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### CONSENT TO FILING

This amicus brief is filed, pursuant to Supreme Court Rule 42(2), with the written consent of all parties to the case.

### INTEREST OF AMICUS CURIAE

The National Education Association ("NEA"), founded in 1857 and chartered by act of Congress in

1906, is the nation's oldest and largest organization of educators. NEA's membership exceeds 1.7 million nationwide. NEA's charter purposes are to "elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States." To this end NEA seeks to protect the constitutional rights of both teachers and students.

The questions presented in this case are: (1) whether severe and excessive corporal punishment administered by public school officials is subject to the Eighth Amendment prohibition against cruel and unusual punishment, and (2) whether a public school official may inflict corporal punishment on a student without first according the student basic elements of procedural due process.

As a national organization of educators, NEA has a unique interest in these issues. At its 1976 Convention, NEA adopted Resolution 76-18, supporting disciplinary procedures that "protect the student's right to a fair hearing" and "provide the classroom teacher with the authority to maintain internal classroom management." NEA believes that in administering corporal punishment public school teachers and administrators are, and in the interest of sound education should be, subject to Eighth Amendment strictures. NEA believes that inflicting such punishment without elementary due process violates the Fourteenth Amendment and is inimical to the cause of education.

This Court's decision will have significant impact on whether discipline in the public schools comports with the Constitution.



## STATEMENT OF FACTS

This suit involves corporal punishment of public school students at Charles R. Drew Junior High School, Dade County, Florida, during the academic year 1970-71. By any standard the punishment was severe and excessive. By any standard the student offenses, actual or assumed, were minor. In no case was the student accorded a hearing of any kind. The students whose punishments the Fifth Circuit panel reviewed (498 F.2d at 255-59) included:

*James Ingraham.* While two school administrators held Ingraham face down on a table, the principal beat him 20 times on the buttocks with a wooden slab, called a "paddle." The beating, euphemistically called "paddling," caused a large oozing hematoma that required three hospital treatments; Ingraham missed ten days of school and was unable to sit comfortably for three weeks. His offense (of which he claimed innocence) was that he was slow to leave the auditorium stage.

*Roosevelt Andrews.* A teacher stopped Andrews, told him he could not possibly get to his next class on time, and took him to an administrator. The latter sent him to a bathroom, where about 15 boys lined up against the urinals were being "paddled." Andrews told the administrator he would have made it to class, if the teacher had not stopped him. The administrator told Andrews to bend over. When the student refused, the administrator pushed him against a urinal, hit his buttocks, his leg, his arm and the back of his neck.

Andrews was "paddled" at least twice for not wearing certain attire prescribed for physical education class—white socks on one occasion and tennis shoes on

another. On each occasion Andrews tried to explain that his footgear had been stolen.

On another occasion, the principal wielded his "paddle" on Andrews' wrist, causing painful swelling that required medical treatment. Andrews couldn't use his arm for about a week. His offense was breakage of glasses in sheet metal class. Andrews claimed the breakage was not his fault.

*Daniel Lee.* An administrator, while chastising a line of students, called Lee over to "get a little piece of the board." Lee asked what he had done. The administrator grabbed him and, while trying to bend him over a chair,[1] struck him four or five blows on the hand. The blows caused a bone fracture and painful swelling; at trial the court noted that the hand remained disfigured.

*Reginald Bloom.* An assistant principal beat Bloom's buttocks so repeatedly (about 50 times) and so hard the boy could not sit down; the buttocks were black and blue and swollen, requiring medical attention and ice-pack treatments; Bloom could not sit down without pain for about three weeks. This punishment was for an obscene phone call to a teacher. Bloom denied making it; later, another boy confessed.

*Rodney Williams.* An administrator hit Williams five or ten times on the head and back with a paddle, then hit him with a belt. Williams needed an operation to remove the lump that developed where his head was struck. Williams lost about a week of school. His

[1] Drew students were often required to "hook up" for paddlings —that is, to bend over the back of a chair and hold the front of the seat. If a blow disturbed this posture or caused the pupil to move the chair, he received extra blows.



offense was that he wiped off his seat in the auditorium before sitting down. On other occasions beatings by the principal and an assistant principal caused Williams to cough up blood. The boy was sickly and on one such occasion he required hospital treatment after a 10-stroke beating left him shaking all over.

*Janice Dean.* On her first day at school, Miss Dean, not knowing about seating assignments in the auditorium, sat in the wrong seat. For this offense an assistant principal hit her buttocks five times with a wooden paddle. On another occasion another administrator, who showed no knowledge of any misconduct on her part, beat her buttocks fifteen times.

*Unnamed student.* Several Drew students were called into the principal's office and accused of fighting on the way home from school. When they resisted physical beatings, the principal and two of his assistants threw one youth around the room, hitting him and throwing him on the table. They injured the youth's hand; he was out of school for two weeks.

*Group punishment.* The school administrators administered group beatings. When James Ingraham was punished for alleged slowness in leaving the auditorium stage, he was among a number of boys and girls accused of this offense; they were all taken to the principal's office and beaten. Roosevelt Andrews testified that, shortly before he was pushed against a urinal and beaten, the administrator had lined up about 15 boys against the urinals and "paddled" them all. When Daniel Lee asked an administrator what he had done to deserve a "piece of the board," the administrator was in the act of "paddling" a number of students. The same administrator gave all 15 students in a noisy typing class five "licks" apiece. Another time,

in order to find out who had been whistling in a class of more than 30 students, he "paddled" about half the class before learning the identity of the whistler. Group "paddlings" for misbehavior in the auditorium were commonplace.

## ARGUMENT

This case does not concern use of physical restraint to prevent a student from injuring persons or damaging property. It concerns physical punishment of a student for an offense, actual or assumed. NEA holds no brief against physical restraint of a student who causes or threatens violence to persons or property.[2] But NEA does oppose the kinds of punishment and the absence of due process disclosed in this record.

The constitutionality of the Florida statute and Dade County School Board policy, insofar as they permit corporal punishment, is not challenged and is not an issue in this case.[3] What is in issue is the constitutionality of *specific acts of severe and excessive corporal punishment* committed by public school teachers and administrators. In issue as well is the constitutionality

[2] The NEA Task Force Report on Corporal Punishment (1972) proposed a model statute which, while prohibiting corporal punishment, would expressly permit physical restraint reasonable and necessary for a teacher:

> "1) to protect himself, the pupil, or others from physical injury;
> "2) to obtain possession of a weapon or other dangerous object upon the person or within the control of a pupil;
> "3) to protect property from serious harm;
> "and such physical restraint shall not be construed to constitute corporal punishment. . . ."

[3] An attack on abusive exercise of authority conferred by statute is not an attack on the statute's constitutionality. Phillips v. United States, 312 U.S. 246, 252 (1941).



of inflicting corporal punishment without first according the student fundamental procedural fairness.

NEA urges that the Fifth Circuit decision be reversed. In NEA's view, reversal will not impair school discipline; it will advance the cause of education in the United States.

## I. THE EIGHTH AMENDMENT BARS PUBLIC SCHOOL OFFICIALS FROM INFLICTING SEVERE CORPORAL PUNISHMENT ON STUDENTS.

### A. The Eighth Amendment Applies to Acts of State Officers.

The Eighth and Fourteenth Amendments prohibit states from inflicting cruel and unusual punishment. *Woodson* v. *North Carolina*, —— U.S. ——, 44 U.S.L. WEEK 5267, 5268, 5275 (1976); *Furman* v. *Georgia*, 408 U.S. 238, 240-41 (1972) (per curiam); *Robinson* v. *California*, 370 U.S. 660, 667 (1962). It is undisputed that the principal, his assistants and the teachers under his administration at Drew Junior High School are officers of the State of Florida.

### B. The Availability of a State Remedy for Tort Does Not Preclude a Federal Remedy for Constitutional Violation.

This action was brought under the Civil Rights Act of 1871 (42 U.S.C. §1983), which creates legal and equitable federal remedies for persons deprived of constitutional rights under color of state law. The majority opinion below refused to apply the federal remedy, partly on the ground that the students' proper basis of action was state "tort and criminal law, *not* federal constitutional law" (525 F.2d at 915) (emphasis in original).

That refusal is incompatible with this Court's ruling in *Monroe* v. *Pape,* 365 U.S. 167, 183 (1961):

> It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.

**C. The Punishments Here Were Cruel and Unusual.**

Under color of Florida Statutes § 232.27 and School Board Policy 5144, Drew Junior High School officials inflicted corporal punishments so severe and excessive as to offend the Eighth Amendment. As noted above, the question here is not whether the Eighth Amendment protects public school students from any and all forms of corporal punishment, but whether the specific punishments in this case transgressed constitutional bounds.

The Eighth Amendment prohibits infliction of "cruel and unusual punishments." The threshold question—whether the acts complained of were punishments—is quickly answered. The acts were done pursuant to School Board Policy 5144, which defines punishment as "the inflicting of a penalty for an offense." In every case the beatings were administered as punishment for student offenses, actual or assumed. Yet the majority below held such punishment beyond the reach of the Eighth Amendment; they held the Amendment restrains only punishment of criminals, 525 F.2d at 912-15. They dismissed out of hand the opposite holding in *Bramlet* v. *Wilson,* 495 F.2d 714, 717 (8th Cir. 1974). The opinion states that the Amendment's use of the words "bail" and "fines" connotes only criminal sanctions; in fact bail and fines are used



in civil as well as criminal proceedings.[4] Unmindful that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society," *Trop* v. *Dulles,* 356 U.S. 86, 101 (1958) (Warren, C.J.), the court below defines the Amendment by the terms of a single paragraph of legislative history. The error is compounded by the court's failure to take account of the Amendment's historical setting. In 1791, states punished only criminal conduct; the public school system did not yet exist. See 525 F.2d at 923 (Rives, J., dissenting).

The further constitutional question—whether the punishments here were cruel and unusual—must also be answered affirmatively. Historically this Court has considered punishment to be cruel and unusual which is either cruelly inhumane, *Wilkerson* v. *Utah,* 99 U.S. 130, 135-36 (1879); *In re Kemmler,* 136 U.S. 436, 447 (1890), or disproportionate to the offense, *Weems* v. *United States,* 217 U.S. 349 (1910). The punishments here were so severe as to be cruelly inhumane and so excessive as to be out of all proportion to the offenses. For leaving the auditorium stage too slowly, James Ingraham was disabled for ten days and required three hospital treatments for the painful hematoma inflicted on him. For asking what he had done to deserve a "piece of the board," Daniel Lee had his hand broken and disfigured. For wiping off his auditorium seat, Rodney Williams suffered a head blow that required an operation. Apparently for the breakage of some glasses, Roosevelt Andrews lost the use of his arm for a week. For sitting in the wrong auditorium seat, Miss

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[4] *E.g.*, 8 U.S.C. § 1252(a) (bail pending determination of deportability); 11 U.S.C. § 28(a) (bail pending examination of a bankrupt); 28 U.S.C. § 1826(b) (bail pending appeal in civil contempt

Dean suffered a fivefold thrashing on her buttocks with a wooden board.[5]

If such punishments had been inflicted on convicted felons, they would surely be deemed cruel and unusual. See *Gregg* v. *Georgia,* —— U.S. ——, 44 U.S.L. WEEK 5230, 5234-35 (1976) (opinion of Stewart, Powell, and Stevens, JJ.). It would be incongruous if they were to be found otherwise when inflicted on young public school students.

In short, the record establishes violations of 42 U.S.C. § 1983 based on official deprivation of the Eighth Amendment right of freedom from cruel and unusual punishment. Dismissing the claims for these violations was error.

## II. THE FOURTEENTH AMENDMENT BARS CORPORAL PUNISHMENT WITHOUT DUE PROCESS.

The Fourteenth Amendment prohibits states from depriving any person of life, liberty or property without due process of law. This Court has held that public school students have a property interest in attending school and a liberty interest in maintaining their reputations and integrity, and that (except where deprivations are *de minimis*) states may not deprive students of such liberty or property rights on charges of misconduct, without according the students at least minimal due process. *Goss* v. *Lopez,* 419 U.S. 565, 572-76 (1975).

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cases); United States v. United Mine Workers of America, 330 U.S. 258, 303-04 (1947) (fine for civil contempt).

[5] The majority opinion describes these punishments as "paddling" or "spanking" on the "backside" or the "wrist"; it describes their consequences in terms of "discomfort" (525 F.2d at 911). These euphemisms and understatements cannot obscure the bodily violence visited on young Ingraham, Andrews, Lee, Bloom, Jones, Williams, Miss Dean and many others.



The corporal punishments meted out in this case deprived students of substantial liberty and property rights. Administrators and teachers at Drew Junior High School imposed such punishments arbitrarily, in disregard of the Due Process Clause, with no hearing or procedural safeguard of any kind.

### A. Drew Students Were Deprived of Substantial Property Rights.

As in *Goss* (which involved Ohio statutes and regulations), Florida statutes and School Board regulations provide for free compulsory education and empower school authorities to impose penalties for student misconduct (Florida Statutes §§ 232.01, 232.27; School Board Policy 5144).

In *Goss,* students were suspended for up to 10 days without a hearing. This Court held (419 U.S. at 574):

> The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause.

Here students were kept out of school not by suspensions, but by beatings that disabled them from attending school, in some cases for as long as 10 days or two weeks. Thus they suffered the same property losses as those recognized in *Goss.* Indeed their property losses were greater; the beatings forced them not only to miss school but to incur medical and hospital expenses besides. The command of the Fourteenth

Amendment applied in *Goss* applies *a fortiori* in this case.

**B. Drew Students Were Deprived of Substantial Liberty Rights.**

The Fourteenth Amendment forbids arbitrary deprivations of liberty. Liberty encompasses not only freedom from arbitrary arrest or imprisonment, but also the right to maintain one's good name, reputation and integrity. When a state places these rights at stake, it must provide at least minimal due process. *Board of Regents* v. *Roth,* 408 U.S. 564, 573 (1972); *Wisconsin* v. *Constantineau,* 400 U.S. 433, 437 (1971).

In *Goss,* where students were suspended without hearings on charges of misconduct, this Court held (419 U.S. at 575):

> If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution. (Footnote omitted.)

Dade County School Board Policy 5144, as revised in 1971, requires that the offense for which a student receives corporal punishment be recorded. The recorded offense could, as in *Goss,* mar a student's reputation and future. But primarily and acutely at stake here is the student's bodily integrity. Freedom from bodily restraint is a fundamental liberty. *Meyer* v. *Nebraska,* 262 U.S. 390, 399 (1923). Freedom from bodily beatings cannot be deemed less fundamental. *Baker* v. *Owen,* 395 F. Supp. 294, 301 (M.D.N.C.)



(three-judge court), *aff'd,* —— U.S. ——, 96 S. Ct. 210 (1975).

Drew Junior High School administrators punished students for misconduct without providing means for testing the students' guilt or listening to circumstances in mitigation. As in *Goss,* they determined guilt and punishment "unilaterally and without process."

Corporal punishment holds extraordinary potential for abuse, as this record abundantly demonstrates and as courts have frequently noted, *e.g., Nelson* v. *Heyne,* 491 F.2d 352, 356 (7th Cir. 1974); *Jackson* v. *Bishop,* 404 F.2d 571, 579 (8th Cir. 1968). It is precisely for this reason that NEA advocates fair disciplinary procedures, not only when corporal punishment is severe and excessive but whenever corporal punishment is to be administered.

In NEA's view, liberty and due process should be woven into the very fabric of education, lest we "teach youth to discount important principles of our government as mere platitudes." *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 637 (1943). A student taught arbitrary corporal punishment by example may well fail to understand liberty taught by the book.

**III. DUE PROCESS REQUIRES NOTICE AND HEARING.**

In *Goss* v. *Lopez, supra,* this Court held that students punishable by suspension must be accorded at least "*some* kind of notice and . . . *some* kind of hearing." 419 U.S. at 579 (emphasis in original). No lesser process should be accorded students subject to corporal punishment.

In prescribing appropriate measures of due process, this Court seeks an "accommodation of the competing interests involved." *Ibid.; Morrissey* v. *Brewer,* 408 U.S. 471, 482 (1972); *Cafeteria & Restaurant Workers Union* v. *McElroy,* 367 U.S. 886, 896 (1961). NEA believes that the procedures formulated in *Goss* reasonably accommodate the student's interest in freedom from arbitrary corporal punishment and the school official's interest in maintaining proper discipline.

The essence of due process was succinctly enunciated by Mr. Justice Frankfurter, concurring in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 171-72 (1951):

> Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.

*Notice of Charges.* This Court held in *Goss* that a student facing temporary suspension must "first be told what he is accused of doing and what the basis of the accusation is." 419 U.S. at 582. The notice need not be a formal written charge; it may be informal and oral. But some such notice is indispensable under the Due Process Clause. No less notice should be accorded to a student who is subject to corporal punishment.

*Opportunity for Hearing.* Disciplinary proceedings in public schools can hardly be expected to conform to the fact-finding procedures of a judicial trial, but



a rudimentary hearing may expose false or exaggerated charges, bring to light mitigating circumstances, avert arbitrary or excessive punishment. In *Goss,* this Court recognized that due process in public school discipline requires at least an informal hearing (419 U.S. at 584):

> Requiring that there be at least an informal give-and-take between student and disciplinarian . . . will add little to the factfinding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

Such a hearing is especially important in corporal punishment cases, where there is high potential for abuse and no way to undo a mistake.[6]

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[6] Punishment by suspension, if found to be unwarranted, can be swiftly remedied; the suspension can be lifted; the record of the student's alleged infraction can be expunged.

## CONCLUSION

The judgment of the Fifth Circuit should be reversed and the case remanded for further proceedings consistent with the applicability of the Eighth and Fourteenth Amendments to corporal punishment in public schools.

Respectfully submitted,

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